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(SIGNATURE)

In re patent application of: Ned HOFFMAN, et al.

Serial No. 09/215,058

Examiner: James W. MYHRE

Filed: December 17, 1998

Group Art Unit: 3622

For: **TOKENLESS FINANCIAL ACCESS SYSTEM**

Confirmation No. 7856

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MAIL STOP APPEAL BRIEF - PATENTS

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Enclosed for filing in the above-referenced application are the following:

- ☒ Appeal Brief in triplicate (including Exhibits 1-3)
- ☒ Filing Fee
- ☒ PTO Form 2038 authorizing credit card payment for the above-listed fees
- ☒ Any deficiency or overpayment should be charged or credited to deposit account number 13-1703. A duplicate copy of this sheet is enclosed.

Customer No. 20575

Respectfully submitted,

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11-22-2004

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**APPELLANT'S BRIEF
UNDER 37 C.F.R. § 1.192**

Appeal is taken from the Examiner's Office Action mailed July 21, 2004 finally rejecting claims 1-12 and 23-31 in this application.

This Appeal Brief is further to the Notice of Appeal mailed in this case on October 21, 2004.

The fees required under §1.17(c) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This Brief is transmitted in triplicate.

This Brief contains these items under the following headings, and in the order set forth below.

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I. REAL PARTY IN INTEREST
37 C.F.R. § 1.192(c)(1)

Indivos Corporation is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES
37 C.F.R. § 1.192(c)(2)

There are no other appeals or interferences known to Appellant, the Appellant's representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal. In the interest of notice, Appellant currently has patent application number 09/639,948 that deals with related technology under appeal with the Board.

III. STATUS OF CLAIMS
37 C.F.R. § 1.192(c)(3)

Status of All the Claims:

- 1. Claims presented: 1-31
- 2. Claims withdrawn from consideration but not cancelled: NONE
- 3. Claims canceled: 13-22
- 4. Claims pending: 1-12 and 23-31 of which:
 - a. Claims allowed: NONE
 - b. Claims rejected: 1-12 and 23-31

All the rejected claims, namely claims 1-12 and 23-31, are being appealed. The appealed claims are eligible for appeal, having been finally rejected.

IV. STATUS OF AMENDMENTS
37 C.F.R. § 1.192(c)(4)

On January 18, 2002, the Examiner issued an Office Action objecting to the specification due to a lack of a "Brief Description of the Drawings" section, rejecting

claims 1-22 based on double patenting, and rejecting claims 1-22 as originally filed under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,202,151 to Musgrave et al. (“Musgrave”) in view of various other cited U.S. Patents. On April 18, 2002, Applicant responded by submitting a substitute specification, amending claim 1, adding claim new claim 23, cancelling claims 13-22, stating that terminal disclaimers would be filed regarding the double patenting rejections, and arguing against the rejections based on Musgrave.

On June 20, 2002, the Examiner issued a Final Office Action reasserting the double patenting rejections because terminal disclaimers had not been filed and reasserting the rejections based on Musgrave, including a rejection of claim 23 based on Musgrave. On August 15, 2002, the Examiner conducted a phone interview with Applicant's Attorney regarding further amendments to claim 1 and arguments related to the Musgrave disclosure. On September 18, 2002, Applicant responded to the Final Office Action by filing a Request for Continued Examination and an Amendment. In the Amendment, Applicant amended claim 1 and added new claim 24 stating that the Examiner had agreed in the phone interview that the amendment would overcome the Examiner's rejections.

On October 23, 2002, the Examiner issued an Office Action presenting new grounds for rejection of claims 1, 3-6, 8, 10, 12, 23, and 24 under 35 U.S.C § 103 as being unpatentable over Musgrave in view of U.S. Patent No. 5,291,560 to Daugman (“Daugman”), rejection of claim 2 under 35 U.S.C. § 103 as being unpatentable over Musgrave in view of Daugman and in further view of U.S. Patent No. 6,045,039 to Stinson et al. (“Stinson”), rejecting claims 7 and 9 under 35 U.S.C. § 103 as being unpatentable over Musgrave in view of Daugman and in further view of U.S. Patent No. 6,105,010 to Musgrave (“Musgrave '010”), and rejecting claim 11 under 35 U.S.C. § 103 as being unpatentable over Musgrave in view of Daugman and in further view of U.S. Patent No. 6,070,141 to Houvener et al. (“Houvener”). On December 12 2003, Applicant responded by amending claim 1, adding new claims 25-27, and amending the specification to include a priority claim to U.S. Patent No. 5,870,723 to the applicant that predates Musgrave, making Musgrave no longer available as a reference under 35 U.S.C. § 103(a).

On June 19, 2003, the Examiner issued an Office Action rejecting claims 1-12, 23 and 27 based on double patenting and rejecting claims 1-12 and 23-27 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,070,141 to Houvener et al. (“Houvener”) in view of Daugman. On December 12, 2003, Applicant responded by amending claim 1, adding new claim 28, stating that terminal disclaimers will be filed regarding claims 1-12, 23 and 27, and argued against the rejections.

On January 23, 2004, the Examiner issued a Final Office Action reasserting the double patenting rejections and the rejections based on Houvener and Daugman. On April 22, 2004, Applicant responded by filing an Amendment After Final Rejection amending claim 4, adding new claims 29-31, and arguing against the rejections. On May 24, 2004, the Examiner issued an Advisory Action stating that the Amendment After final would not be entered as it would require a new search.

On June 14, 2004, Applicant filed a Request for Continued Examination, requesting entry of the Amendment After Final filed on April 22, 2004. On July 21, 2004, the Examiner issued a Final Office Action rejecting claims 1-12, 23, and 27 based on double patenting, and rejecting claims 1-12 and 23-31 under 35 U.S.C. § 103 as being unpatentable over Houvener in view of Daugman. Although the Examiner did conduct a new search based on the Amendment After Final, the Examiner concluded that the grounds for rejection presented on January 23, 2004 could be maintained, resulting in a Final Office Action as the first action after the Request for Continued Examination.

V. SUMMARY OF THE INVENTION

37 C.F.R. § 1.192(c)(5)

A method for tokenless authorization of commercial transactions completed by accessing, processing and presenting electronic communications using a user's biometric are shown by exemplary independent claim 1. The methods involve tokenless identification and authorization of a commercial transaction which is achieved by identifying a user by comparing the user's bid biometric sample to registered biometric samples and completing the commercial transaction, if the user is successfully identified, by debiting a user's financial account and crediting a seller's financial account. The methods satisfy the need for a fraud-resistant way for users to universally complete commercial transactions without requiring a token such as a magnetic swipe card.

VI. ISSUES ON APPEAL

37 C.F.R. § 1.192(c)(6)

The Examiner has rejected claims 1-12 and 23-31 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,070,141 to Houvener et al. ("Houvener") in view of U.S. Patent No. 5,291,560 to Daugman ("Daugman").

The Examiner has also rejected 1-12, 23, and 27 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 9-10, 20, 21, 24-26, 28, and 29 of U.S. Patent No. 5,870,723. Appellant does not take issue with this

rejection and, per a telephone interview with the Examiner held on November 2, 2004, Appellant intends to file a terminal disclaimer to overcome this rejection.

For the convenience of the Board of Appeals, the entire Office Action dated June 19, 2003, the entire Final Office Action dated January 23, 2004, and the entire Final Office Action dated July 21, 2004 have been reproduced and attached as Exhibits 1-3, respectively. The Office Actions dated June 20, 2002, July 18, 2002, and October 23, 2002 and are not attached because the Appellant has already overcome those objections and rejections specifically presented therein, and thus those issues are not part of this Appeal.

The issue before the Board of Appeals is whether the rejections under 35 U.S.C. § 103 over Houvener in view of Daugman should be reversed.

VII. GROUPING OF CLAIMS

37 C.F.R. § 1.192(c)(7)

The claims include five groups of claims. Claims 1, 2, 7-10, 12, and 23-28 are grouped together. Claims 3-6 and 31 are grouped together. Claim 11 comprises a grouping. Claim 29 comprises a grouping. Claim 30 comprises a grouping.

VIII. ARGUMENT

37 C.F.R. § 1.192(c)(8)

In the non-final Office Action dated June 19, 2003, the Examiner rejected claims 1-12 and 23-27 as being unpatentable over Houvener in view of Daugman under 35 U.S.C. § 103(a). The Examiner relied on Houvener as disclosing all of the limitations of independent claim 1 except comparing a bid biometric sample to registered biometric samples in a database. The Examiner relied on Daugman as disclosing comparing the biometric data of iris codes to previously stored iris codes. The Examiner also relied on claim 21 of the Houvener disclosure, interpreting that claim to say that biometric data is used as a first identification step and an account number as a second identification step. The Examiner reasserted these arguments in the subsequent Final Office Actions of January 23, 2004 and July 21, 2004. The reasons why these claims and claims 28-31 are patentable are discussed below, first in general and then with specific reference to each group of claims.

A. Houvener Discloses Using A Biometric Sample To Verify An Already-Made Identification, Not To Make A Primary Identification

In an amendment filed on December 12, 2003, Appellant responded with arguments that Houvener does not teach comparing current biometric data with registered biometric

samples to identify a user. Rather, Houvener teaches a system for assessing the quality of identification already made. In Houvener, the user presents a card, such as a credit card. The clerk inputs the account number into a system either by reading the account number electronically off of the card or by manually inputting the account number. The account is forwarded to an identification database. The account number is found in the database and an identification unit (such as a photo) is returned to the clerk. The clerk compares this identification unit with the user, and if there is a match, the transaction is performed.

The current application is directed toward a method for performing tokenless authorization of commercial transactions. A user registers a biometric sample and a financial account. A seller also registers a financial account. The seller proposes a commercial transaction. The proposed commercial transaction, including personal identification information comprising at least a bid biometric sample, is transmitted to a computer system. The user is identified by comparing the bid biometric sample with registered biometric samples, and not by an account number. If the user is identified successfully, the user's financial account is debited and the seller's financial account is credited. The commercial transaction is conducted without the user using smart cards, swipe cards or some other means of initial identification.

Houvener describes a two-step process: step one involves identifying a user, and step two involves *verifying* that identity through the use of biometric data. Only after these two steps are complete is the transaction performed. In contrast, the invention of the present application is one-step identification process: the user is identified by using the user's biometric sample, without needing verification.

The Examiner argued, in the Office Action of June 19, 2003, that there are situations in which the customer would not have an account number, and therefore would not enter an account number. But in such situations there would still be some identifying number, even if it is not an account number. And if there is "no account number" as the Examiner posits, then there would be no second identification unit returned by the system, meaning that the Examiner is "redesigning" Houvener into a system different from that intended: the Examiner is using hindsight to identify weaknesses in the design of Houvener. Houvener explicitly teaches that there are two identification units in the information database (see column 3, lines 15-19: the summary of the invention). Houvner calls for the user to register some information other than the biometric data.

In addition, Houvener describes at column 3, lines 41-46, the second identification unit is used to *verify* a previous identification. Thus, after the user presents his financial account, biometric data is retrieved (such as a photo described in the Houvener embodiment),

so that the clerk can compare the photo against the person physically present to confirm the previous identification. Interchanging the roles of the biometric data and the financial account number (that is, Houvener's two identification units), as the Examiner infers from Houvener claim 21, would result in the clerk using the financial account to verify the user's identity: something an account number cannot do. An account number is an arbitrary number, assigned by some third party, that has no value outside of its association with the user, and does not provide any intrinsic information about the user that could be used to verify the user's identity. The clerk cannot look at the financial account number and compare it with the physical presence of the user to verify the user's identity. If account numbers would have had the ability to verify a user's identity, they would have been used to that purpose a long time ago.

The Examiner responded to these arguments in the Final Office Action issued on January 23, 2004. The Examiner argued that both the Houvener and Daugman references are being used to identify an individual. (Actually, as discussed above, Houvener discloses using biometric information to verify a previous identification, and not to identify a user.) The Examiner relied on claim 21 of Houvener, interpreting claim 21 to say that the first identifying information could be the biometric data.

In an Amendment After Final Rejection filed on April 22, 2004, Appellant responded to the Examiner's arguments by pointing out that Houvener is directed toward identity verification and more particularly to a "system and method of assessing the quality of an identification transaction." Houvener uses biometric data to *verify* a previous identification, which is a two-step process. Even Houvener claim 21 cited by the Examiner still describes a two-step process for verifying a first identification.

With respect to claim 21 of Houvener, Appellant responded that the Examiner's interpretation of claim 21 as teaching using the biometric as the first identification unit in Houvener is not enabled by the Houvener specification. The reason Houvener does not enable the Examiner's interpretation of claim 21 is that the Examiner's interpretation of claim 21 leads to an illogical conclusion that the identification number, such as an account number, can be used to verify the user's identity in the second step of the Houvener two-step process. As pointed out above, an arbitrarily assigned number (be it from governmental agency or some private organization) provides no value in verifying identity, as is required of the second identification unit in Houvener. Anyone could have the number, and the mere fact that the user presents a number to a clerk does not support the user's position that he is who he says he is: that is, the presentation of the number does not verify the user's identity.

The Examiner responded to these arguments in the Final Office Action dated July 21, 2004. The Examiner explicitly noted that in Houvener, “the first step identifies the customer (and the account), and the second step verifies the identity of the customer.” The Examiner then explained that biometric data could be used in the first identification step. The Examiner failed, however, to explain how the second verification step would be performed in Houvener if the biometric data is used as a first identification step. And to dismiss the second identification step completely is to ignore the purpose and the invention of Houvener: in other words, to redesign Houvener in a way not at all suggested.

The Examiner’s “redesign” of Houvener to meet the claims is an application of hindsight, which is impermissible under 35 U.S.C. § 103. “Determination of obviousness can not be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.” *See ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998).

It is also worth noting that Daugman was issued long before the Houvener patent application was filed. Had Houvener been interested in designing a system using biometric identification, Houvener could have used Daugman as a starting point. That Houvener specifically teaches away from performing biometric identification, as taught by Daugman, strongly suggests that the combination the Examiner proposes is not supported by Houvener.

B. Each Group of Claims is Patentable Over Houvener in View of Daugman.

1. The Claims of Group 1 Include Subject Matter Not Disclosed by Houvener or Daugman.

The first group of claims consists of claims 1, 2, 7-10, 12, and 23-28, of which independent claim 1 is a representative member. Claim 1 is patentable over the combination of Houvener and Daugman. The Examiner stated that Houvener teaches using biometric data as a first identification step. But Houvener only discloses a two-step identification-verification process and does not disclose how an arbitrarily assigned number could be used to verify an identification. Houvener is specifically directed toward a system of verifying a previous identification. Claim 1 of the present application simplifies that process by utilizing a single identification process that produces either a successful or failed identification, without the need to verify the identification.

Daugman teaches only iris identification and does not disclose nor enable the use of iris identification to complete a commercial transaction as is claimed in claim 1 of the present application. Thus, because the biometric in Houvener is used only to verify the user’s identity, the combination of Daugman and Houvener, a combination the Appellant believes is

not workable, would be use iris identification as a second identity *verification* step. Claim 1 is still distinguishable from this combination, both in that the verification step of Houvener is not needed by the claimed invention, and because the biometric identification in the claimed invention is not taught by the combination of references.

Accordingly, claim 1 is patentable over Houvener in view of Daugman. For similar reasons, claims 12, 23, and 27 are allowable.

2. The Claims of Group 2 Add Further Distinguishing Features Over Houvener and Daugman.

The second group of claims consists of claims 3-6 and 31, of which claim 3 is a representative member. Claim 3 depends from claim 28, which depends from claim 1. Claim 3 is additionally directed toward setting up and accessing multiple user financial accounts where a user assigns an account index code to each user financial account at the registration step and the user adds a desired account index code at the acceptance step.

Because the claims of group 2 depend from claim 1, the claims of group 2 are patentable for the same reasons as the claims of group 1. In addition, in the Office Action dated June 19, 2003, the Examiner noted that neither Houvener nor Daugman explicitly disclose using an account index code to select an account. The Examiner took Official Notice that it is well known within the banking arts to display a list of accounts to users and to identify the accounts using account codes and names. The Examiner, however, failed to show a user assigning an index code to each of the user accounts at the registration step. In all of the examples given by the Examiner, the user does not assign the code for each of the user's accounts; the bank or some other institution arbitrarily assigns any codes associated with multiple accounts.

In addition, Examiners in other patents have specifically allowed claims including the account index code. As an example, in U.S. Patent Application Serial No. 09/731,536, filed December 6, 2000, currently allowed, the Examiner specifically indicated that the use of an account index code provided a distinguishing feature over prior art. Another example is U.S. Patent Application Serial No. 09/879,370, now U.S. Patent No. 6,662,166. The Appellant is not asserting that the use of an account index code by itself is new, but that the combination of the account index code with tokenless biometric identification for commercial transactions is novel and non-obvious. If the Examiner would prefer an amendment to clarify the use of the account index code, the Appellant is willing to discuss such an amendment.

Accordingly, claim 3 is patentable over Houvener in view of Daugman. Similarly, claims 4-6 and 31 are allowable.

3. The Claim of Group 3 Adds Further Distinguishing Features Over Houvener and Daugman.

The third group of claims consists of claim 11. Claim 11 depends from claim 1 and is additionally directed to a re-registration step that automatically identifies users who perpetrate fraud on the system if and when those users re-register by comparing a registration biometric sample against previously designated biometric samples.

Because the claim of group 3 depends from claim 1, the claim of group 3 is patentable for the same reasons as the claims of group 1. In addition, in the Final Office Action dated January 23, 2004, the Examiner argued that Houvener discloses this concept, and refers to column 6, lines 52-67, and column 7, lines 38-42. The Examiner is arguing from general comments made in Houvener, without addressing the specifics of claim 11 of the present application. Column 6, lines 52-67 discuss the problem of identity-based fraud with reference to identification documents that are susceptible to forgery. Column 7, lines 38-42 discusses other identity-based fraud indicators, and specifically mentions the possibility of “an individual enrolling an abnormally large number of accounts . . . in a short period of time or . . . under different names using a common address.” While this excerpt describes one technique to recognize a user registering multiple times with the system, it is by no means the only way to recognize such an occurrence, and it is not the claimed invention. To take a general comment about fraud, interpret it to mean that there is a need to watch for re-registration in all circumstances, and use that interpretation to reject any and all other techniques to identify re-registration misinterprets the language of Houvener.

Finally, the fraud that Houvener is concerned about is a single individual enrolling a number of accounts, not repeated entry of a single biometric. Claim 11 recognizes that a single user might legitimately register a number of accounts at one time: note that claim 1, from which claim 11 depends, indicates that the user “registers . . . at least one user financial account”: at least one, and possibly more. Claim 11, in contrast, is concerned with the situation where a user has previously registered with the system, and now attempts to register anew, using the same biometric. The situations addressed by Houvener and the claimed invention are very different, and neither suggests the other.

Accordingly, claim 11 is patentable over Houvener in view of Daugman.

4. The Claim of Group 4 Add Further Distinguishing Features Over Houvener And Daugman.

The fourth group of claims consists of claim 29. Claim 29 depends from claim 1. Claim 29 is additionally directed toward the user identification being complete after the comparison of the bid biometric sample with the registration biometric sample.

Because the claim of group 4 depends from claim 1, the claim of group 4 is patentable for the same reasons as the claims of group 1. In addition, as noted in the Amendment filed in response to the Office Action of January 23, 2004, claim 29 was added to emphasize the one-step nature of the invention. As discussed above, Houvener is a two-step process. Even if the Examiner's proposed modification of Houvener were reasonable, the combination would still require the verification step. As Houvener teaches, this requires transmitting something back to the point of identification, and that the identification is not complete until the user's identity has been verified. But claim 29 says that the identification is complete after the comparison of the bid biometric sample with the registration biometric samples. If the identification is complete after that comparison, then there can be no second verification step, as required by Houvener.

Accordingly, claim 29 is patentable over Houvener in view of Daugman.

5. The Claim of Group 5 Add Further Distinguishing Features Over Houvener And Daugman.

The fifth group of claims consists of claim 30. Claim 30 depends from claim 29. Claim 30 is additionally directed toward completing the user identification without transmitting any information to the user or seller.

Because the claim of group 5 depends from claim 1, the claim of group 5 is patentable for the same reasons as the claims of group 1. In addition, as noted in the Amendment filed in response to the Office Action of January 23, 2004, claim 30 was added to emphasize the one-step nature of the invention. As discussed above, Houvener is a two-step process. Even if the Examiner's proposed modification of Houvener were reasonable, the combination would still require the verification step. As Houvener teaches, this requires transmitting something back to the point of identification, and that the identification is not complete until the user's identity has been verified. But claim 30 says that the identification is complete without transmitting any information to the user or seller. If the identification can be completed without transmitting any information to the user or seller, then there can be no verification of the user's identity. This means that Houvener's second verification step, which is required by Houvener, is not performed by the claimed invention.

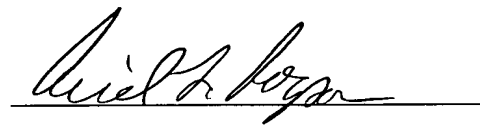
Accordingly, claim 30 is patentable over Houvener in view of Daugman.

In summary, because Houvener is directed only toward a two-step identification-then-verification process, there exists no suggestion to create the single-step identification process of the present application. Combining Daugman with Houvener still fails to suggest creating a single-step identification process that does not include the Houvener verification step. The Examiner resorts to impermissible hindsight by redesigning the teachings of Houvener to conform to Appellant's teachings and claimed invention. Second, the Examiner failed to present a *prima facie* case regarding a user indexing multiple accounts at a registration step. Finally, Houvener and Daugman both fail to disclose automatically checking a re-registered biometric sample with registered biometric samples as a step in preventing fraud.

CONCLUSION

For the foregoing reasons, Appellant requests that the Board reverse the Examiner's 35 U.S.C. § 103 rejections of Appellant's claims.

Respectfully submitted,
MARGER JOHNSON & MCCOLLOM, P.C.

A handwritten signature in cursive script, appearing to read 'Ariel S. Rogson', is written over a horizontal line.

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APPENDIX
37 C.F.R. § 1.192(c)(9)

The text of the claims on appeal (1-12, and 23-31) is:

1. A method for tokenless authorization of commercial transactions between a user and a seller using a computer system, the method comprising the steps of:
 - a. a user registration step, wherein the user registers with the computer system at least one registration biometric sample and at least one user financial account;
 - b. a seller registration step, wherein the seller registers with the computer system at least one seller financial account;
 - c. a proposal step, wherein the seller offers a proposed commercial transaction to the user, the proposed commercial transaction comprising price information;
 - d. a transmission step, wherein the user's personal identification information comprising at least a bid biometric sample is forwarded to the computer system;
 - e. a user identification step, wherein the computer system compares the bid biometric sample with registration biometric samples for producing either a successful or failed identification of the user; and
 - f. a payment step, wherein a financial account of the user is debited and a financial account of the seller is credited, wherein a commercial transaction is conducted without the user having to use any smartcards or swipe cards.
2. The method of claim 1 further comprising a user resource determination step, wherein after successful identification of the user, a determination is made if the user has sufficient resources to pay for the transaction.
3. The method of claim 28 wherein during the user registration step, the user registers at least one user financial account and assigns an account index code to each user financial account, and during the acceptance step the user adds the account index code to the commercial transaction message, wherein the account index code further comprises one or more alphanumeric characters.
4. The method of claim 3, further comprising a user resource determination step, wherein after successful identification of the user, a determination is made if the user has sufficient resources to pay for the transaction using the account index code that was added to the commercial transaction message to select the corresponding user financial account.

5. The method of claim 3 wherein the registration step further comprises assigning an account index name to an account index code.

6. The method of claim 5 further comprising an account name display step, wherein a list of accounts with their account index names can be retrieved and displayed to the user after a successful identification, wherein no transaction needs to take place if it is desired that the account index names be retrieved.

7. The method of claim 1 wherein during the payment step, a credit authorization draft is created detailing an agreement to pay the seller from the user's financial account up to an amount specified during the proposal step, whereby transactions can be conducted when the exact amount to be transferred is not known at the time of authorization or when a deposit is required but the account may not ever be debited.

8. The method of claim 2 wherein during both the resource determination step and the payment step the computer system communicates with one or more external computer systems in order to perform any combination of the following steps: the resource determination or the construction of the credit authorization draft.

9. The method of claim 1 wherein the price information comprises any combination of the following: a list of goods and services, a seller name, a date and time, a location, or an invoice number.

10. The method of claim 28 wherein the acceptance step further comprises the user entering an amount that is the sum of a cash back value to the proposed transaction amount.

11. The method of claim 1 further comprising a user re-registration check step, wherein the user's registration biometric samples are compared against previously designated biometric samples of certain users wherein if a match occurs, the computer system is alerted to the fact that the user has re-registered, whereby users who perpetrate fraud on the system can be automatically identified from their biometrics alone if and when they re-register.

12. The method of claim 1 wherein the biometric sample comprises one of the following: a fingerprint, a retinal image, and a voice print.

13. (Canceled)

14. (Canceled)

15. (Canceled)

16. (Canceled)

17. (Canceled)

18. (Canceled)

19. (Canceled)

20. (Canceled)

21. (Canceled)

22. (Canceled)

23. The method of claim 1, further comprising a presentation step, wherein any combination of the results of steps a) through f) are presented to the user or seller.

24. The method of claim 1, wherein the transmission step forwards the bid biometric sample to the computer system in the absence of the user financial account.

25. The method of claim 1, wherein the seller registration step includes identifying the seller by a hardware identification code stored in a biometric input apparatus.

26. The method of claim 25, wherein the proposal step includes adding the hardware identification code of the biometric input apparatus to the proposed commercial transaction.

27. The method of claim 1, wherein the transmission step includes forwarding the proposed commercial transaction to the computer system, the proposed commercial transaction including the bid biometric sample.

28. The method of claim 1, further comprising an acceptance step, wherein the user signals acceptance of the seller's proposed commercial transaction by adding to the proposed commercial transaction the user's personal identification information comprising the bid biometric sample, wherein the bid biometric sample is obtained from the user's person.

29. The method of claim 1, wherein the user identification step is completed by the computer system after the comparison of the bid biometric sample with the registration biometric samples.

30. The method of claim 29, wherein the user identification step is completed without transmitting any information from the computer system to the user or seller.

31. The method of claim 29, further comprising an account selection step, wherein the user selects the financial account to be debited from a plurality of financial accounts registered with the computer system.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/215,058	12/17/1998	NED HOFFMAN	STA-14	7856

7590 06/19/2003

MARGER JOHNSON & MCCOLLON, P.C.
1030 S. W. MORRISON STREET
PORTLAND, OR 97205

8514-100

EXAMINER

MYHRE, JAMES W

ART UNIT PAPER NUMBER

3622

DATE MAILED: 06/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



EXHIBIT

tabbies

Office Action Summary

Application No.
09/215,058

Applicant(s)
Hoffman et al

Examiner
James W. Myhre

Art Unit
3622



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 28, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Response to Amendment

1. The amendment filed on April 28, 2003 is sufficient to overcome the Musgrave (6,105,010), Musgrave et al (6,202,151), and Stinson et al (6,045,039) references by changing the priority date of the present application to August 29, 1996.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.

A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b). The Applicant indicated on page 5 of the amendment filed on April 22, 2002, that a "terminal disclosure is filed herewith to overcome the rejection of claims 1-12 as being double-patented". As the Examiner noted in the subsequent action (paper number 9) on June 20, 2002, no evidence has been found that the terminal disclaimer was actually submitted. Therefore, the Examiner maintains the double-patenting rejection of Claims 1-12 as indicated below.

Claims 1-12, 23, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 9-1, 20, 21, 24-26, 28, and 29 of U.S. Patent No. 5,870,723 in view of claim 1 of U.S. Patent 6,269,348.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the patent is claiming a method for tokenless authorization of commercial transactions using biometric data by comparing the user's current biometric data with previously stored biometric sample data. There are only two differences between the patented claim 1 and the present claim 1. First, the patent includes the feature of the seller registering not only an account number as in the application, but also a seller identification code. However, in claim 7 of the patent the seller identification code is the same as the seller's account number, therefore eliminating this difference between the claims. Second, the patent includes the feature of the

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buyer registers not only an account number and biometric sample as in the application, but also a personal identification number (PIN). The Examiner notes that the exclusion of the requirement to register a PIN would have been an obvious variation of the patent. Indeed, in Claim 1 of Patent No. 6,269,348, which claims priority from the above patent, the Applicant only requires the buyer to enter a biometric sample and an account number.

The other dependent claims listed above are substantially word-for-word duplicates of the dependent claims of the patent. The Examiner notes, however, that the parties involved in the transactions are identified using different terminology. In the patent, the parties are identified as the buyer and the seller. In the instant application, they are identified as the user and the seller. Since both sets of terms refer to the two parties involved in a transaction, the Examiner finds no patentable distinction by this use of alternative terminology. Likewise, the amendment filed on April 28, 2003 changed the "the user's personal authentication information" in Claim 1 to "the user's personal identification information". However, this merely changed the terminology used to describe the same biometric sample being received from the user; and, thus, no patentable distinction exists between this alternative terminology.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

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Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Houvener et al (6,070,141) in view of



Claims 1, 23, 24, and 27: Houvener discloses a method for authorizing transactions using biometric identification, comprising:

- a. Registering the user's (customer's) biometric and account data (col 11, lines 33-37);
- b. Adding the customer's current biometric data to transaction offer data upon acceptance of the transaction by the customer (col 7, line 45 - col 8, line 6);
- c. Transmitting the combined data to a remote authentication system (col 7, line 45 - col 8, line 6);
- d. Comparing the transmitted biometric data with the stored registered biometric data to verify the identity of the customer (col 9, lines 16-21 and col 10, lines 8-15);
- e. Transferring the payment between the customer's account and the merchant's account (or another of the user's accounts, e.g. electronic funds transfer from checking account to

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savings account) once it's been determined that the customer's account has sufficient funds (within its pre-approval credit limit)(col 7, line 45 - col 8, line 6); and

f. Presenting the results to the customer, merchant, or both (col 8, lines 3-6).

While Houvener discloses that an account number is entered at the POS, then transmitted to the database, which uses the account number to locate stored biometric data pertaining to the customer and which then compares the stored biometric data with the biometric data supplied by the customer at the POS, since the account number and the biometric data is linked within the database it would have been obvious to one having ordinary skill in the art at the time the invention was made that either part of the linked data could be used as the input to find the other part of the linked data, in other words, it is obvious the entered data could be the biometric data and that the linked data could be the account number. Houvener implies this by disclosing that the use of a credit card account number as the entered data is one example of how the system could be used and also noting "However, it is understood that the system and method disclosed herein is adaptable to any application where positive identification of a person is required. Such alternative applications comprise other banking transactions, firearms sales, food stamp reimbursement and a host of other applications related to the welfare, voting, law enforcement, health care, airline, immigration and naturalization fields, which will be discussed in more general terms below" (col 4, line 58 - col 5, line 5). In many of these alternative applications, the "customer" would not have an account number to submit. Moreover, the use of biometric data by

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Houvener to actually identify the individual (and, thus, his account) eliminates the need to use the account number to identify the individual, especially when combined with Daugman (see below).

While Houvener discloses comparing the customer's current biometric data with the stored biometric data to verify the identity of the customer (i.e. a one-to-one comparison), it is not explicitly disclosed that the current biometric data is being compared to biometric samples from a plurality of customers in the database (i.e. a one-to-many) to determine the identity of the current customer. Daugman discloses a similar method for using biometric data (iris codes) to identify individuals in which the comparison may be between "two iris codes, as well as exhaustive searches through large databases of stored iris codes" and "could exhaustively compare a 'presenting' iris code against a population of 80 million previously stored iris codes within one second, to establish reliably whether the individual is any one of those persons" (col 18, lines 1-9). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to compare the current biometric data collected by Houvener against a plurality of stored biometric data to identify the customer and, since Houvener has linked the customer's account and biometric data, the customer's account number. One would have been motivated to compare the current biometric data to a plurality of stored biometric data in order to automatically and unobtrusively identify the customer without the need for the customer to present any kind of token, PIN number, signature, or the like automatically as discussed by Daugman (col 1, lines 52-55).

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While Houvener discloses using this biometric identification system for electronic transactions and banking functions to include transferring funds between accounts and explicitly discloses that the store clerk will be positively identified by the use of a smart card and PIN so that “the system can recreate a transaction and identify not only the person initiating the transaction but the clerk who was responsible for positively identifying the individual initiated the transaction” (col 11, lines 6-9), it is not explicitly disclosed that the merchant’s account is going to be pre-registered with the system, nor that the merchant proposes a transaction offer to the customer. The Examiner notes that it is common to pre-register merchants and their account numbers with commerce systems for a variety of reasons. For example, pre-registering merchants provides a higher level of assurance to the customer that the merchant is an “approved” merchant that can be trusted to provide the goods/services. Pre-registering merchants also enabled the system to charge a pre-negotiated transaction fee to the merchant, such as is common with credit card transactions. By pre-registering, merchants are also able to complete transactions without having to transmit their account number over unsecure lines (e.g. the Internet) each time. For these and other well known benefits, it would have been obvious to one having ordinary skill in the art at the time the invention was made to register the merchant and to include at least one of the merchant’s financial account number. One would have been motivated to include such a registration step for the merchants in the Houvener invention in view of the reasons above and Houvener’s discussion of the importance of data protection on the Internet and processing the credit card transaction.

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The Examiner notes that the definition of the merchant's transaction offer in Claim 1, wherein "the proposed commercial transaction comprising price information", reads on a catalogue, an advertisement, sales flyer, or verbal price quote by the merchant. Since almost all customers (except, possibly, extremely rich customers) would want to know the price of the goods/services before purchasing the goods/services, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the merchant to present the price of the goods/services to the customer. One would have been motivated to present the price to the customer in order to allow the customer to make a better business decision on the quality of the offer.

Claim 2: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses determining if the customer has sufficient funds in the account (col 7, line 45 - col 8, line 6).

Claims 3-6: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, neither reference explicitly discloses using an account code to select an account, assigning a name to the account code, nor displaying a list of the accounts to the customer upon successful identification. Official Notice is taken that it is old and well known within the banking arts to display a list of accounts to a user (such as when operating an ATM terminal) and to identify the accounts using account codes and account names. For example, when a customer logs onto an ATM terminal and selects the type of desired transaction, the terminal will display a list of pertinent accounts and ask the customer to select one or more

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(depending upon the type of transaction). The list of accounts do not normally show the entire account number, which may be quite extensive in length, but rather the list consists of an account code (e.g. A, B, C, and D) and an associated account name (e.g. checking, savings, Christmas Club, money market). The customer normally selects the desired account by pressing the keyboard button indicated by the account code. A similar system is used to allow a customer to select the desired account when completing a transaction at a merchant's facility, such as a travel agency. If the customer has several travel accounts (e.g. business, executive, and personal), the system will display the list of the customer and allow the customer to enter the account code for the desired travel account. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to display a list of accounts to Houvener customer using account codes and account names and to allow the customer to select the desired account. One would have been motivated to display and use such a list in order to eliminate the need for the customer to remember the lengthy account numbers of each account, thus facilitating a more expeditious selection of the desired account and decreasing the opportunity for erroneous (undesired) selections.

Claim 7: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, but neither reference explicitly discloses creating a credit authorization draft. The Examiner notes that credit authorization drafts as disclosed by Claim 7 are well known within the business arts and are used extensively in business-to-business transactions to allow transactions to be completed, for example, without the need to pre-approve

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a transaction in which the final price may not be known ahead of time (e.g. repair of an office machine). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to create a credit authorization draft in the Houvener reference. One would have been motivated to include the creation of a credit authorization draft in the Houvener reference in order to facilitate business-to-business transactions without overburdening the two accounting departments.

Claim 8: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, and Houvener further discloses the data being communicated between remote computer systems to determine resources and/or construct the credit authorization draft (col 7, line 45 - col 8, line 6).

Claim 9: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. While Houvener discloses including and storing the transaction data as a transaction record, it is not explicitly disclosed that the transaction data contains one or more of a list of goods/services, a seller name, a date and time, a location, or an invoice number. The Examiner notes that these are well known elements usually contained in transaction data files. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include one or more of these elements in the Houvener transaction data. One would have been motivated to include these features in order to facilitate delivery of the purchased goods/services and to better identify the transaction for accounting

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processing by all parties concerned, especially when attempting to “recreate a transaction” as discussed by Houvener (col 11, lines 4-9).

Claim 10: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, but neither reference explicitly discloses that the customer can receive cash back during the transaction. The Examiner notes that cash back transactions are extremely well known throughout society and are the major means for many people to maintain their supply of cash-on-hand for small purchases. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the customer in Houvener to receive cash back during a transaction by entering an amount that exceeds the amount of the goods/services being purchased. One would have been motivated to allow a cash back transaction in order to increase customer satisfaction and goodwill and to allow the customer to have the cash to “tip” the merchant representative for exceptional service, provide change for parking meters, etc.

Claim 11: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses checking incoming registration biometric samples against previously stored biometric samples to prevent duplicate registration of individuals, either inadvertently or for fraudulent purposes (col 6, lines 52-67 and col 7, lines 38-42).

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Claim 12: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses the type of biometric data being used consisting of one or more of “fingerprints, retinal images, or the like” (col 9, lines 16-20).

Claims 25 and 26: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses that the merchant will be identified by comparing stored identification data with identification data received over the remote connection. As an example, Houvener suggests the use of “commonly available caller ID technology to ensure that the request for data has originated from an authorized telephone line” (col 6, lines 20-31). Since Houvener also discloses that the system could be run not only through telephone network (hence, the caller ID example), but also through a wide area network, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use other known technology for verifying the sending unit in Houvener, to include network address comparison, hardware identification number comparison, etc. One would have been motivated to use the hardware identification code in the identification comparison in view of its uniqueness, since manufacturer do not give the same hardware identification number to two items.

Response to Arguments

5. Applicant's argument that the rejections are traversed has been considered but is moot in view of the new ground(s) of rejection.


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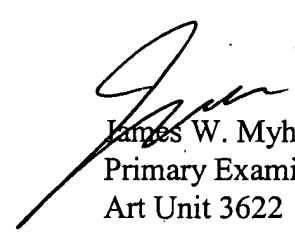
Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:30 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, can be reached on (703) 305-8469. The fax phone number for Formal or Official faxes to Technology Center 3600 is (703) 872-9326. Draft or Informal faxes may be submitted to (703) 872-9327 or directly to the examiner at (703) 746-5544.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-1113.


JWM
June 18, 2003


James W. Myhre
Primary Examiner
Art Unit 3622



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/215,058	12/17/1998	NED HOFFMAN	STA-14 8514-100	7856

7590 01/23/2004

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PORTLAND, OR 97205

EXAMINER

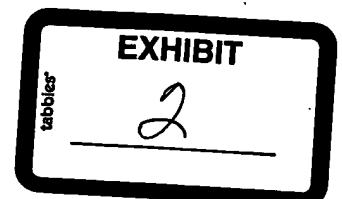
MYHRE, JAMES W

ART UNIT PAPER NUMBER

3622

DATE MAILED: 01/23/2004

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Office Action Summary

Application No.

09/215,058

Applicant(s)

HOFFMAN ET AL.

Examiner

James W Myhre

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

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- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
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- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on December 12, 2003 has been considered but is ineffective to overcome the Houvener et al (6,070,141) and Daugman (5,291,560) references.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.

A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The Applicant indicated on page 6 of the amendment filed on December 12, 2003, that a "terminal disclaimer will be filed once the claims are allowed over prior art". Therefore, the Examiner maintains the double-patenting rejection of Claims 1-12, 23, and 27 as indicated below.

Claims 1-12, 23, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 9-1, 20, 21, 24-26, 28, and 29 of U.S. Patent No. 5,870,723 in view of claim 1 of U.S. Patent 6,269,348.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: the patent is claiming a method for tokenless authorization of commercial transactions using biometric data by comparing the user's current biometric data with previously stored biometric sample data. There are only two differences between the patented claim 1 and the present claim 1. First, the patent includes the feature of the seller registering not only an account number as in the application, but also a seller identification code. However, in claim 7 of the patent the seller identification code is the same as the seller's account number, therefore eliminating this difference between the claims. Second, the patent includes the feature of the buyer registers not only an account number and biometric sample as in the application, but also a personal identification number (PIN). The Examiner notes that

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the exclusion of the requirement to register a PIN would have been an obvious variation of the patent. Indeed, in Claim 1 of Patent No. 6,269,348, which claims priority from the above patent, the Applicant only requires the buyer to enter a biometric sample and an account number.

The other dependent claims listed above are substantially word-for-word duplicates of the dependent claims of the patent. The Examiner notes, however, that the parties involved in the transactions are identified using different terminology. In the patent, the parties are identified as the buyer and the seller. In the instant application, they are identified as the user and the seller. Since both sets of terms refer to the two parties involved in a transaction, the Examiner finds no patentable distinction by this use of alternative terminology. Likewise, the amendment filed on April 28, 2003 changed the "the user's personal authentication information" in Claim 1 to "the user's personal identification information". However, this merely changed the terminology used to describe the same biometric sample being received from the user; and, thus, no patentable distinction exists between this alternative terminology.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-12 and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houvener et al (6,070,141) in view of Daugman (5,291,560) .

Claims 1, 23, 24, and 27: Houvener discloses a method for authorizing transactions using biometric identification, comprising:

a. Registering the user's (customer's) biometric and account data (col 11, lines 33-37);

b. Transmitting at least a biometric sample to a remote authentication system (col 7, line 45 - col 8, line 6);

c. Comparing the transmitted biometric data with the stored registered biometric data to verify the identity of the customer (col 9, lines 16-21 and col 10, lines 8-15);

d. Transferring the payment between the customer's account and the merchant's account (or another of the user's accounts, e.g. electronic funds transfer from checking account to savings account) once it has been determined that the customer's account has sufficient funds (within its pre-approval credit limit)(col 7, line 45 - col 8, line 6); and

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e. Presenting the results to the customer, merchant, or both (col 8, lines 3-6).

Houvenner discloses that a first of at least two identification units is input to the system by the customer ("person to be identified") at the point of sale, then transmitted to the database, which uses the first identification unit to locate a stored second identification information unit that is mapped to the received first identification information unit. Houvenner also discloses that the first identification information unit is any form of identification such as a driver's license number, a social security number or the like (col 9, lines 36-39) and that the second identification information unit is preferably biometric data pertaining to the customer. The system will then compare the stored biometric data with a biometric data sample supplied by the customer at the POS. Since the account number and the biometric data are linked within the database it would have been obvious to one having ordinary skill in the art at the time the invention was made once the identity of the customer has been verified that in order to approve the transaction needs to be approved as discussed by Houvenner. This approval in Houvenner takes place through the normal credit card or banking approval channels using the account number that is linked to the identified individual. As Houvenner claims in Claim 21, either of the identification information units could comprise a biometric identifier; thus, implying that the first identification information unit above could be the biometric identifier, not the account number. Thus, the biometric identifier could be used as the input to find the other part of the linked data, the account number. Moreover, the use of biometric data by Houvenner to actually identify the

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individual (and, thus, his account) eliminates the need to use the account number to identify the individual, especially when combined with Daugman (see below).

While Houvener discloses comparing the customer's current biometric data with the stored biometric data to verify the identity of the customer (i.e. a one-to-one comparison) and that the database contains identification information about a plurality of persons (col 11, lines 33-38), it is not explicitly disclosed that the current biometric data is being compared to biometric samples from the plurality of customers in the database (i.e. a one-to-many) to determine the identity of the current customer. Daugman discloses a similar method for using biometric data (iris codes) to identify individuals in which the comparison may be between "two iris codes, as well as exhaustive searches through large databases of stored iris codes" and "could exhaustively compare a 'presenting' iris code against a population of 80 million previously stored iris codes within one second, to establish reliably whether the individual is any one of those persons" (col 18, lines 1-9). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to compare the current biometric data collected by Houvener against the plurality of stored biometric data to identify the customer and, since Houvener has linked the customer's account and biometric data, the customer's account number. One would have been motivated to compare the current biometric data to a plurality of stored biometric data in order to automatically and unobtrusively identify the customer without the need for the customer to present any kind of token, PIN number, signature, or the like automatically as discussed by Daugman (col 1, lines 52-55).

While Houvenner discloses using this biometric identification system for electronic transactions and banking functions to include transferring funds between accounts and explicitly discloses that the store clerk will be positively identified by the use of a smart card and PIN so that "the system can recreate a transaction and identify not only the person initiating the transaction but the clerk who was responsible for positively identifying the individual initiated the transaction" (col 11, lines 6-9), it is not explicitly disclosed that the merchant's account is going to be pre-registered with the system, nor that the merchant proposes a transaction offer to the customer. The Examiner notes that it is common to pre-register merchants and their account numbers with commerce systems for a variety of reasons. For example, pre-registering merchants provides a higher level of assurance to the customer that the merchant is an "approved" merchant that can be trusted to provide the goods/services. Pre-registering merchants also enabled the system to charge a pre-negotiated transaction fee to the merchant, such as is common with credit card transactions. By pre-registering, merchants are also able to complete transactions without having to transmit their account number over unsecure lines (e.g. the Internet) each time. For these and other well known benefits, it would have been obvious to one having ordinary skill in the art at the time the invention was made to register the merchant and to include at least one of the merchant's financial account number. One would have been motivated to include such a registration step for the merchants in the Houvenner invention in view of the reasons above and Houvenner's discussion of the importance of data protection on the Internet and processing the credit card transaction.

The Examiner notes that the definition of the merchant's transaction offer in Claim 1, wherein "the proposed commercial transaction comprising price information", reads on a catalogue, an advertisement, sales flyer, or verbal price quote by the merchant. Since almost all customers (except, possibly, extremely rich customers) would want to know the price of the goods/services before purchasing the goods/services, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the merchant to present the price of the goods/services to the customer. One would have been motivated to present the price to the customer in order to allow the customer to make a better business decision on the quality of the offer.

Claim 2: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses determining if the customer has sufficient funds in the account (col 7, line 45 - col 8, line 6).

Claims 3-6: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, neither reference explicitly discloses using an account code to select an account, assigning a name to the account code, nor displaying a list of the accounts to the customer upon successful identification. Official Notice is taken that it is old and well known within the banking arts to display a list of accounts to a user (such as when operating an ATM terminal) and to identify the accounts using account codes and account names. For example, when a customer logs onto an ATM terminal and selects the type of desired transaction, the

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terminal will display a list of pertinent accounts and ask the customer to select one or more (depending upon the type of transaction). The list of accounts do not normally show the entire account number, which may be quite extensive in length, but rather the list consists of an account code (e.g. A, B, C, and D) and an associated account name (e.g. checking, savings, Christmas Club, money market). The customer normally selects the desired account by pressing the keyboard button indicated by the account code. A similar system is used to allow a customer to select the desired account when completing a transaction at a merchant's facility, such as a travel agency. If the customer has several travel accounts (e.g. business, executive, and personal), the system will display the list of the customer and allow the customer to enter the account code for the desired travel account. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to display a list of accounts to Houvener customer using account codes and account names and to allow the customer to select the desired account. One would have been motivated to display and use such a list in order to eliminate the need for the customer to remember the lengthy account numbers of each account, thus facilitating a more expeditious selection of the desired account and decreasing the opportunity for erroneous (undesired) selections.

Claim 7: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, but neither reference explicitly discloses creating a credit authorization draft. The Examiner notes that credit authorization drafts as disclosed by Claim 7 are well known within the business arts and

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are used extensively in business-to-business transactions to allow transactions to be completed, for example, without the need to pre-approve a transaction in which the final price may not be known ahead of time (e.g. repair of an office machine). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to create a credit authorization draft in the Houvener reference. One would have been motivated to include the creation of a credit authorization draft in the Houvener reference in order to facilitate business-to-business transactions without overburdening the two accounting departments.

Claim 8: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, and Houvener further discloses the data being communicated between remote computer systems to determine resources and/or construct the credit authorization draft (col 7, line 45 - col 8, line 6).

Claim 9: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. While Houvener discloses including and storing the transaction data as a transaction record, it is not explicitly disclosed that the transaction data contains one or more of a list of goods/services, a seller name, a date and time, a location, or an invoice number. The Examiner notes that these are well known elements usually contained in transaction data files. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include one or more of these elements in the Houvener transaction data. One would have been motivated to include these features in order to facilitate delivery of the purchased goods/services and to better identify the transaction for accounting

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processing by all parties concerned, especially when attempting to "recreate a transaction" as discussed by Houvener (col 11, lines 4-9).

Claim 10: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, but neither reference explicitly discloses that the customer can receive cash back during the transaction. The Examiner notes that cash back transactions are extremely well known throughout society and are the major means for many people to maintain their supply of cash-on-hand for small purchases. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the customer in Houvener to receive cash back during a transaction by entering an amount that exceeds the amount of the goods/services being purchased. One would have been motivated to allow a cash back transaction in order to increase customer satisfaction and goodwill and to allow the customer to have the cash to "tip" the merchant representative for exceptional service, provide change for parking meters, etc.

Claim 11: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses checking incoming registration biometric samples against previously stored biometric samples to prevent duplicate registration of individuals, either inadvertently or for fraudulent purposes (col 6, lines 52-67 and col 7, lines 38-42).

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Claim 12: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses the type of biometric data being used consisting of one or more of "fingerprints, retinal images, or the like" (col 9, lines 16-20).

Claims 25 and 26: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses that the merchant will be identified by comparing stored identification data with identification data received over the remote connection. As an example, Houvener suggests the use of "commonly available caller ID technology to ensure that the request for data has originated from an authorized telephone line" (col 6, lines 20-31). Since Houvener also discloses that the system could be run not only through telephone network (hence, the caller ID example), but also through a wide area network, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use other known technology for verifying the sending unit in Houvener, to include network address comparison, hardware identification number comparison, etc. One would have been motivated to use the hardware identification code in the identification comparison in view of its uniqueness, since manufacturer do not give the same hardware identification number to two items.

Claim 28: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, and Houvener further discloses adding the customer's current biometric data to the transaction offer data upon acceptance of the transaction by the customer (col 7, line 45 – col 8, line 6).

Response to Arguments

5. Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive.

a. In response to applicant's argument (page 7) that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references are using biometric data to identify an individual. Therefore, it would have been obvious to one setting up a transaction system which uses biometric identification as in Houvener to look at other biometric identification art to determine alternate methods of biometrically identifying individuals.

b. The Applicant argues that Houvener uses biometrics to verify the user, not to identify the user (page 7). The Examiner notes that Houvener uses the first identifying information unit to determine the linked second identifying information unit, which together identify the customer and the customer's account. The patented Claim 21 also indicates that the first identifying information could be the biometric data. Thus, the individual is being identified by the biometric data. Furthermore, Daugman discloses using a biometric identification system using iris data in order to preclude the user from

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having to touch or enter any information. Thus, once again, the individual is being identified based on the biometric data.

c. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (page 7), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

d. The Applicant argues that Houvener cannot be modified by turning around the first and second identifying information units to retrieve the account number because the account number could not be used by the clerk to further verify the customer's identity (page 9) and that searching for matching biometric data is very different from searching for a matching account number. The Examiner notes that Houvener provides embodiments in which more than one second identifying information units is returned to the POS system and that these may include a different biometric identification information unit such as a photograph. Furthermore, if, as is suggested in the reference and which would also be necessary in the present invention, the individual has more than one account registered with the system, the accounts information would need to be returned to the POS to allow the customer to select which account is to be used for this transaction. As for the search strategy used in locating matching account numbers or

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biometric data, Daugman explicitly discloses how biometric data may be broken down into numerical data to enable a comparison search with 80 million stored samples to be completed within a few seconds. Thus, there would be little if any difference in the search strategy or results of an account search or a biometric data search.

e. The Applicant argues that Houvener uses tokens (page 10) and that Claim 1 states "wherein a commercial transaction is conducted without the user having to use any smartcards or swipe cards" (page 11). The Examiner notes that while Houvener uses smartcards as an exemplary embodiment of the invention, it is also disclosed that magnetic cards, bar code readers, check readers, and even data entry via keyboard could also be used to conduct cashless transactions in other embodiments. Thus, the Houvener system is not limited to only smartcard or swipe cards transactions.

f. The Applicant argues in reference to Claim 11 that Houvener does not disclose comparing registration information with previous information to alert the system when a user is attempting to reregister (page 12). However, Houvener explicitly discloses notifying the system about possible fraudulent activities such as when a user attempts to open numerous accounts (reregister) using the same name, same address, etc. (page 7, lines 38-44). The only way for the system to know that the user has opened numerous accounts is to compare the registration data with previous registration data.

g. The Applicant argues in reference to Claim 24 that Houvener does not disclose forwarding the "biometric sample to the computer system in the absence of the user financial account" (page 12). This has been discussed above in reference to the

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first and second identifying information units wherein the first identifying information unit (biometric data) is used to locate the linked second identifying information.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:30 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, can be reached on (703) 305-8469. The fax phone number for Formal or Official faxes to Technology Center 3600 is (703) 872-9326. Draft or

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Informal faxes may be submitted to (703) 872-9327 or directly to the examiner at (703) 746-5544.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-1113.



JWM

January 22, 2004



James W. Myhre
Primary Examiner
Art Unit 3622



UNIT

S PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/215,058	12/17/1998	NED HOFFMAN	STA-14 894-100	7856

7590 07/21/2004

MARGER JOHNSON & MCCOLLON, P.C.
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PORTLAND, OR 97205

EXAMINER

MYHRE, JAMES W

ART UNIT PAPER NUMBER

3622

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

ENTERED
9/21/04

4/10/21/04

EXHIBIT

3

Office Action Summary

Application No.

09/215,058

Applicant(s)

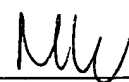
HOFFMAN ET AL.

Examiner

James W Myhre

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 23-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application on June 14, 2004 after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission (After-Final Amendment) filed on April 26, 2004 has been entered.

Response to Amendment

2. The amendment filed on April 26, 2004 under 37 CFR 1.116 has been considered but is ineffective to overcome the Houvener et al (6,070,141) and Daugman (5,291,560) references. The amendment added Claims 29-31 and amended Claims 3-5, 10, and 23. The currently pending claims considered below are Claims 1-12 and 23-31.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer.

A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The Applicant indicated on page 6 of the amendment filed on April 26, 2004, that "a terminal disclaimer will be filed once the claims are allowed over prior art". Therefore, the Examiner maintains the double-patenting rejection of Claims 1-12, 23, and 27 as indicated below.

Claims 1-12, 23, and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 9-1, 20, 21, 24-26, 28, and 29 of U.S. Patent No. 5,870,723 in view of claim 1 of U.S. Patent 6,269,348.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming

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common subject matter, as follows: the patent is claiming a method for tokenless authorization of commercial transactions using biometric data by comparing the user's current biometric data with previously stored biometric sample data. There are only two differences between the patented claim 1 and the present claim 1. First, the patent includes the feature of the seller registering not only an account number as in the application, but also a seller identification code. However, in claim 7 of the patent the seller identification code is the same as the seller's account number, therefore eliminating this difference between the claims. Second, the patent includes the feature of the buyer registers not only an account number and biometric sample as in the application, but also a personal identification number (PIN). The Examiner notes that the exclusion of the requirement to register a PIN would have been an obvious variation of the patent. Indeed, in Claim 1 of Patent No. 6,269,348, which claims priority from the above patent, the Applicant only requires the buyer to enter a biometric sample and an account number.

The other dependent claims listed above are substantially word-for-word duplicates of the dependent claims of the patent. The Examiner notes, however, that the parties involved in the transactions are identified using different terminology. In the patent, the parties are identified as the buyer and the seller. In the instant application, they are identified as the user and the seller. Since both sets of terms refer to the two parties involved in a transaction, the Examiner finds no patentable distinction by this use of alternative terminology. Likewise, the amendment filed on April 28, 2003 changed the "the user's personal authentication information" in Claim 1 to "the user's personal

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identification information". However, this merely changed the terminology used to describe the same biometric sample being received from the user; and, thus, no patentable distinction exists between this alternative terminology.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12 and 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Houvener et al (6,070,141) in view of Daugman (5,291,560) .

Claims 1, 2, 23, 24, 27, 29, and 30: Houvener discloses a method for authorizing transactions using biometric identification, comprising:

- a. Registering the user's (customer's) biometric and account data (col 11, lines 33-37);
- b. Transmitting at least a biometric sample to a remote authentication system (col 7, line 45 - col 8, line 6);

c. Comparing the transmitted biometric data with the stored registered biometric data to verify the identity of the customer (col 9, lines 16-21 and col 10, lines 8-15);

d. Transferring the payment between the customer's account and the merchant's account (or another of the user's accounts, e.g. electronic funds transfer from checking account to savings account) once it has been determined that the customer's account has sufficient funds (within its pre-approval credit limit)(col 7, line 45 - col 8, line 6); and

e. Presenting the results to the customer, merchant, or both (optional)(col 8, lines 3-6).

Houvenner discloses that a first of at least two identification units is input to the system by the customer ("person to be identified") at the point of sale, then transmitted to the database, which uses the first identification unit to locate a stored second identification information unit that is mapped to the received first identification information unit. Houvenner also discloses that the first identification information unit is any form of identification such as a driver's license number, a social security number or the like (col 9, lines 36-39) and that the second identification information unit is preferably biometric data pertaining to the customer. The system will then compare the stored biometric data with a biometric data sample supplied by the customer at the POS. Since the account number and the biometric data are linked within the database it would have been obvious to one having ordinary skill in the art at the time the invention was made once the identity of the customer has been verified that in order to

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approve the transaction needs to be approved as discussed by Houvener. This approval in Houvener takes place through the normal credit card or banking approval channels using the account number that is linked to the identified individual. As Houvener claims in Claim 21, either of the identification information units could comprise a biometric identifier; thus, implying that the first identification information unit above could be the biometric identifier, not the account number. Thus, the biometric identifier could be used as the input to find the other part of the linked data, the account number. Moreover, the use of biometric data by Houvener to actually identify the individual (and, thus, his account) eliminates the need to use the account number to identify the individual, especially when combined with Daugman (see below).

While Houvener discloses comparing the customer's current biometric data with the stored biometric data to verify the identity of the customer (i.e. a one-to-one comparison) and that the database contains identification information about a plurality of persons (col 11, lines 33-38), it is not explicitly disclosed that the current biometric data is being compared to biometric samples from the plurality of customers in the database (i.e. a one-to-many) to determine the identity of the current customer. Daugman discloses a similar method for using biometric data (iris codes) to identify individuals in which the comparison may be between "two iris codes, as well as exhaustive searches through large databases of stored iris codes" and "could exhaustively compare a 'presenting' iris code against a population of 80 million previously stored iris codes within one second, to establish reliably whether the individual is any one of those persons" (col 18, lines 1-9). Therefore, it would have been obvious to one having

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ordinary skill in the art at the time the invention was made to compare the current biometric data collected by Houvenner against the plurality of stored biometric data to identify the customer and, since Houvenner has linked the customer's account and biometric data, the customer's account number. One would have been motivated to compare the current biometric data to a plurality of stored biometric data in order to automatically and unobtrusively identify the customer without the need for the customer to present any kind of token, PIN number, signature, or the like automatically as discussed by Daugman (col 1, lines 52-55).

While Houvenner discloses using this biometric identification system for electronic transactions and banking functions to include transferring funds between accounts and explicitly discloses that the store clerk will be positively identified by the use of a smart card and PIN so that "the system can recreate a transaction and identify not only the person initiating the transaction but the clerk who was responsible for positively identifying the individual initiated the transaction" (col 11, lines 6-9), it is not explicitly disclosed that the merchant's account is going to be pre-registered with the system, nor that the merchant proposes a transaction offer to the customer. The Examiner notes that it is common to pre-register merchants and their account numbers with commerce systems for a variety of reasons. For example, pre-registering merchants provides a higher level of assurance to the customer that the merchant is an "approved" merchant that can be trusted to provide the goods/services. Pre-registering merchants also enabled the system to charge a pre-negotiated transaction fee to the merchant, such as is common with credit card transactions. By pre-registering, merchants are also able to

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complete transactions without having to transmit their account number over unsecure lines (e.g. the Internet) each time. For these and other well known benefits, it would have been obvious to one having ordinary skill in the art at the time the invention was made to register the merchant and to include at least one of the merchant's financial account number. One would have been motivated to include such a registration step for the merchants in the Houvener invention in view of the reasons above and Houvener's discussion of the importance of data protection on the Internet and processing the credit card transaction.

The Examiner notes that the definition of the merchant's transaction offer in Claim 1, wherein "the proposed commercial transaction comprising price information", reads on a catalogue, an advertisement, sales flyer, or verbal price quote by the merchant. Since almost all customers (except, possibly, extremely rich customers) would want to know the price of the goods/services before purchasing the goods/services, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the merchant to present the price of the goods/services to the customer. One would have been motivated to present the price to the customer in order to allow the customer to make a better business decision on the quality of the offer.

Claims 3-6 and 31: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claims 28 and 29 above, neither reference explicitly discloses using an account code to select an account, assigning a name to the account code, nor displaying a list of the accounts to the customer upon

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successful identification. Official Notice is taken that it is old and well known within the banking arts to display a list of accounts to a user (such as when operating an ATM terminal) and to identify the accounts using account codes and account names. For example, when a customer logs onto an ATM terminal and selects the type of desired transaction, the terminal will display a list of pertinent accounts and ask the customer to select one or more (depending upon the type of transaction). The list of accounts do not normally show the entire account number, which may be quite extensive in length, but rather the list consists of an account code (e.g. A, B, C, and D) and an associated account name (e.g. checking, savings, Christmas Club, money market). The customer normally selects the desired account by pressing the keyboard button indicated by the account code. A similar system is used to allow a customer to select the desired account when completing a transaction at a merchant's facility, such as a travel agency. If the customer has several travel accounts (e.g. business, executive, and personal), the system will display the list of the customer and allow the customer to enter the account code for the desired travel account. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to display a list of accounts to Houvener customer using account codes and account names and to allow the customer to select the desired account. One would have been motivated to display and use such a list in order to eliminate the need for the customer to remember the lengthy account numbers of each account, thus facilitating a more expeditious selection of the desired account and decreasing the opportunity for erroneous (undesired) selections.

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Claim 7: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, but neither reference explicitly discloses creating a credit authorization draft. The Examiner takes Official Notice that credit authorization drafts as disclosed by Claim 7 were well known within the business arts and have been used extensively in business-to-business transactions to allow transactions to be completed, for example, without the need to pre-approve a transaction in which the final price may not be known ahead of time (e.g. repair of an office machine). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to create a credit authorization draft in the Houvener reference. One would have been motivated to include the creation of a credit authorization draft in the Houvener reference in order to facilitate business-to-business transactions without overburdening the two accounting departments.

Claim 8: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 2 above, and Houvener further discloses the data being communicated between remote computer systems to determine resources and/or construct the credit authorization draft (col 7, line 45 - col 8, line 6).

Claim 9: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. While Houvener discloses including and storing the transaction data as a transaction record, it is not explicitly disclosed that the transaction data contains one or more of a list of goods/services, a seller name, a date and time, a location, or an invoice number. The Examiner notes that these are well known elements usually contained in transaction data files. Therefore, it would have

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been obvious to one having ordinary skill in the art at the time the invention was made to include one or more of these elements in the Houvener transaction data. One would have been motivated to include these features in order to facilitate delivery of the purchased goods/services and to better identify the transaction for accounting processing by all parties concerned, especially when attempting to "recreate a transaction" as discussed by Houvener (col 11, lines 4-9).

Claim 10: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 28 above, but neither reference explicitly discloses that the customer can receive cash back during the transaction. The Examiner takes Official Notice that cash back transactions were extremely well known throughout society at the time the invention was made and have been the major means for many people to maintain their supply of cash-on-hand for small purchases. For support of this notice, the Examiner is forwarding a patent (Patent Re 30,821) issued to Goldman in 1981 which extensively discusses cash back transactions at a point of sale terminal in which the system uses the symbol "CB" to indicate a cash back transaction or the signal "NC" to indicate a no-cash transaction. (col 8, lines 32-33). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow the customer in Houvener to receive cash back during a transaction by entering an amount that exceeds the amount of the goods/services being purchased. One would have been motivated to allow a cash back transaction in order to increase customer satisfaction and goodwill and to allow the customer to have the cash to "tip"

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the merchant representative for exceptional service, provide change for parking meters, etc.

Claim 11: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses checking incoming registration biometric samples against previously stored biometric samples to prevent duplicate registration of individuals, either inadvertently or for fraudulent purposes (col 6, lines 52-67 and col 7, lines 38-42).

Claim 12: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses the type of biometric data being used consisting of one or more of "fingerprints, retinal images, or the like" (col 9, lines 16-20).

Claims 25 and 26: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above. Houvener further discloses that the merchant will be identified by comparing stored identification data with identification data received over the remote connection. As an example, Houvener suggests the use of "commonly available caller ID technology to ensure that the request for data has originated from an authorized telephone line" (col 6, lines 20-31). Since Houvener also discloses that the system could be run not only through telephone network (hence, the caller ID example), but also through a wide area network, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use other known technology for verifying the sending unit in Houvener, to include network address comparison, hardware identification number comparison, etc.

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One would have been motivated to use the hardware identification code in the identification comparison in view of its uniqueness, since manufacturers do not give the same hardware identification number to two items.

Claim 28: Houvener and Daugman disclose a method for authorizing transactions using biometric identification as in Claim 1 above, and Houvener further discloses adding the customer's current biometric data to the transaction offer data upon acceptance of the transaction by the customer (col 7, line 45 – col 8, line 6).

Response to Arguments

6. Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive.

The Applicant argues in reference to Claim 1 that Houvener discusses a two-step process for verifying the identity of an individual for authorization of a transaction whereas the present invention uses a one-step process (page 6). The Applicant further argues that Daugman, while disclosing a one-step process for identifying an individual, does not discuss using a single-step process to identify a user for authorization of a transaction (page 7). First, the Examiner notes that both references use biometric data to identify an individual and, thus, are analogous art. Furthermore, while the purpose for identifying the individual such as for authorizing a transaction, for allowing access to a restricted area, for activating an electronic device, or for any other situation requiring the individual be reliably identified does not affect the process in which the identification takes place, Daugman explicitly discloses the reason for requiring such reliable

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identification of the individual is that "human activities and transaction have proliferated in which rapid and reliable personal identification is required. Examples include passport control, computer login control, bank automatic teller machine and *other transaction authorizations*, premises access control, and security systems generally" (emphasis added)(col 1, lines 10-17). Thus, Daugman does discuss using his one-step process for identifying an individual for authorization of a transaction.

As for the two-step process disclosed by Houvener, the Examiner notes that the first step identifies the customer (and the account), and the second step verifies the identity of the customer. As discussed in the rejection above, Houvener discloses that the biometric data could be used as the first identification unit (used in the first "identification" step) or as the second identification unit (used in the "verification" second step). In an embodiment where the biometric data is the first identification unit, Houvener would receive and transmit the customer's biometric data to the remote database site, which would then correlate the received biometric data with the stored biometric data in the database to determine not only the identity of the customer, but the associated account of the customer as discussed in the rejection above. Daugman performs similar steps using biometric data about the customer's iris to identify the customer.

The Applicant also argues in reference to Claim 10 that cash-back transactions were not known prior to the present application's filing date in 1998 (page 8). The terminology in the rejection has been changed to note the fact that cash-back transactions were known at least as far back as 1998. The Examiner has also cited a

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reference published in 1981 (Goldman) which supports the Official Notice by showing that cash back transactions were known at least by 1965, the filing date of the reference, which is over 30 years before the Applicant's filing date.

Finally, the Applicant argues in reference to Claim 11, that "Houvenner does not teach or suggest that *any* re-registration be recognized" (page 9), but only shows that "a particular form of re-registration might be suspect." The Examiner notes that the claim includes the steps of comparing a newly registered biometric sample against previously stored biometric samples to determine if the applicant has previously registered. As the Applicant notes, this is exactly what steps Houvenner also performs to determine if the applicant has previously registered. Whether the system is performing this comparison to prevent an applicant from registering more than once (present application) or for preventing the applicant from registering more than a predetermined number of times (Houvenner) is the desired utility of the system, but does not change the steps performed. Furthermore, the system in Houvenner could set the predetermined number to any number, including 1, which would then prevent an applicant from registering more than once, as in the present application.

Conclusion

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

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FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exr. James W. Myhre whose telephone number is (703) 308-7843. The examiner can normally be reached on weekdays from 6:30 a.m. to 3:30 p.m.

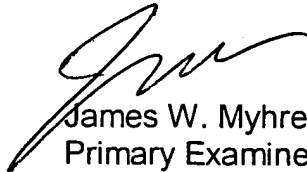
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber, can be reached on (703) 305-8469. The fax phone number for Formal and Official faxes is (703) 872-9306. Draft or Informal faxes may be submitted directly to the examiner at (703) 746-5544.

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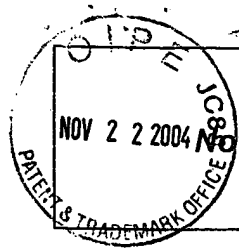
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (703) 308-1113.



JWM
July 19, 2004



James W. Myhre
Primary Examiner
Art Unit 3622

**Notice of References Cited**

Application/Control No.

09/215,058

Applicant(s)/Patent Under

Reexamination

HOFFMAN ET AL.

Examiner

James W Myhre

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U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-RE30,821	12-1981	Goldman, Robert N.	340/5.4
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.